No. 361

NOV 13 1950
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT

OF THE

United States

October Term, 1950

W. J. SIMMS, WILLIAM S. ROSECRANS, EDWARD W. COST, CARRIE D. GRIBBLE, ZELLA Z. McCOMB, MERCHANTS NATIONAL REALTY CORP., a corporation, and SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association,

Petitioners,

vs.

COUNTY OF LOS ANGELES, a body corporate and politic, and CITIES OF GARDENA, VERNON, MONTEREY PARK, and CLAREMONT, municipal corporations,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

HAROLD W. KENNEDY,
County Counsel,
A. Curtis Smith,
Assistant County Counsel,
Gordon Boller
Deputy County Counsel,
Arvo Van Alstyne
Deputy County Counsel,
County of Los Angeles,
Attorneys for Respondents.

OF COUNSEL:
Louis A. Babior,
Deputy City Attorney,
H. H. MacDonald,
Deputy City Attorney,
City of Los Angeles.

WESTERN PRINTING COMPANY, WHITTIER

TOPICAL INDEX

	Page
Opinion Below	1
Jurisdiction	1
1. The Decision of the State Court Is Not Final	2
2. Petitioners are Improperly Seeking a Single Writ to Review Twenty-three Separate Cases	6
Questions Presented	7
Constitutional Provisions and Statutes Involved	8
Statement	8
Argument	
I. In Each of the Five Actions Brought by Petitioner National Bank, the Decision Involved No Substantial or Important Federal Question With Reference to R. S. 5219 or the Equal Protection Clause, and Is Based Upon Adequate Independent State Grounds	11
1. No Substantial Federal Question is Raised	12
2. No Important Question Is Raised	16
3. The Decisions Were Based Upon Adequate Independent State Grounds	17
II. In Each of the Eighteen Actions Brought by Landlords of National Banks, the Decision Involves No Important Federal Question With Reference to the Equal Protection Clause, But Was Decided Upon Adequate Independent State Grounds	19
1. No Important Federal Question Is Raised	20
2. The Decisions Were Based Upon Adequate, Independent State Grounds	20
III. In Each of the Twenty-three Cases the Federal Question With Reference to the Due Process Clause Was Not Timely Raised, and the Decision Was Based Upon Adequate Independent State Grounds	22
1. The Decisions Were Based Upon Adequate Independent State Grounds	23
2. The Question Was Not Timely Raised	25
Conclusion	26
Appendix A	App. 1
Appendix B	App. 15

TABLE OF CASES AND AUTHORITIES CITED

Cases

	Page
Albright v. New Mexico, 200 U. S. 9	19
Albuquerque Nat. Bank v. Perea, 147 U. S. 87	25
American Surety Co. v. Baldwin, 287 U. S. 156, 162	26
Bank of Mendocino v. Chalfant, 51 Cal. 369	23
Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U. S. 673, 677-678	26
Brown v. Spofford, 95 U. S. 474 at 485	6
Bruce v. Tobin, 245 U. S. 18, 19	3
California v. Central R. R. Co., 127 U. S 1	25
California National Bank v. Statler, 171 U. S. 447, 449	2
Central State Bank v. Bennett, 284 U. S. 239 at 247	13, 16
Collins v. Miller, 252 U. S. 364, 371	2
Davis v. Crouch, 94 U. S. 514, 517	2
DeFremery v. Austin, 53 Cal. 380	23, 24
Esterbrook v. O'Brien, 98 Cal. 671, 33 Pac. 765	23
First National Bank v. Louisiana Tax Commission, 289 U. S. 60 at 62	6
First Natl. Bank of Gulfport v. Adams, 258 U. S. 362	15
First National Bank of Portland v. Marion County, 169 Ore. 595, 613 at 616, 130 Pac. 2d 9, 16-17	15
First Trust & Sav. Bank of Pasadena v. Los Angeles, 206 Cal. 240, 273 Pac. 1066	23
German Nat. Bank of Chicago v. Kimball, 103 U. S. 732	25
Great Western Tel. v. Burnham, 162 U. S. 339, 345	2
Hamilton National Bank v. District of Columbia, 176 Fed. 2d 624	15
Henderson & Calloway v. Tennessee, 10 How. [51 U. S.] 311	19
Herndon v. Georgia, 295 U. S. 441, 443-444	26
Hillsborough Township v. Cromwell, 326 U. S. 620	13, 16
Iowa Des Moines Nat. Bank v. Bennett, 284 U. S. 239	13, 16
Kimball v. Evans, 93 U. S. 321	6
Laclede Gas Light Co. v. Public Service Com., 304 U. S. 398, 399-400	2
Loew's, Inc., v. Byram, 11 Cal. 2d 746, 82 Pac. 2d 1	24
Long & Watson v. Converse, 91 U. S. 105	19
Los Angeles Gas and Electric Co. v. Los Angeles, 162 Cal. 164 at 169, 121 Pac. 384	24
Louisiana Nav. Co. v. Oyster Com., 226 U. S. 99, 102	2
Mackay v. San Francisco, 113 Cal. 392, 45 Pac. 696	23, 24
Market Street Railway Co. v. Railroad Commission, 324 U. S. 548, 551	2
Martinez v. International Banking Corp., 220 U. S. 214, 223	3
McClelland v. Board of Supervisors, 30 Cal. 2d 124 at 129, 180 Pac. 2d 676	24

Page
McCulloch v. Maryland, 4 Wheat. (17 U. S.) 316 at 436..... 12
Mississippi Central Railroad Company v. Smith, 295 U. S. 718 3
Missouri v. Andreano, 138 U. S. 496..... 19
N. Y. ex rel. Amoskeag Sav. Bank v. Purdy, 231 U. S 373.....
.....13, 16, 18, 21
Otis v. Los Angeles, 9 Cal. 2d 366, 70 Pac. 2d 633.....23, 24
Owensboro Natl. Bank v. Owensboro, 173 U. S. 664..... 15
People v. Feitner, 167 N. Y. 1 at 8, 60 N. E. 265 at 268..... 15
People's Natl. Bank of Lynchburg v. Marye, 191 U. S. 272.....
.....14, 16, 25
Republic Natural Gas Company v. Oklahoma, 334 U. S. 62,
67-68 .....3, 6
San Diego Trust & Savings Bank v. San Diego, 16 Cal. 2d 142,
105 Pac. 2d 94 (1940) cert. den. 312 U. S. 679.....4, 12
Sand Springs Home v. Naharkey, 299 U. S. 588..... 3
Santa Clara County v. Southern Pac. R. Co., 118 U. S. 394..... 25
Security-First National Bank v. Board of Supervisors, 35 Ad-
vanced California Reports 351; 217 Pac. 2d 948..... 17
Sioux City Bridge Co. v. Dakota, 260 U. S. 441 at 446.....12, 16
Stanley v. Board of Supervisors, 121 U. S. 535.....14, 16, 25
State Railroad Tax Cases, 92 U. S. 575..... 25
Steele v. San Luis Obispo County, 152 Cal. 785, 93 Pac. 1020.... 23
Third & Broadway Bld. Co. v. Los Angeles, 220 Cal. 660, 32
Pac. 2d 377..... 23
Trabue Pittman Corp. v. Los Angeles, 29 Cal. 2d 385, 175 Pac.
2d 512.....4, 12
Tradesmen's National Bank v. Oklahoma Tax. Comm., 309
U. S. 560.....13, 16
Tyler v. Judges of Court of Registration, 179 U. S. 405..... 19
United States v. County of Allegheny, 322 U. S. 174, 184..... 21
Universal Consolidated Oil Co. v. Byram, 25 Cal. 2d 353, 153
Pac. 2d 746.....23, 24, 25
Urie v. Thompson, 377 U. S. 163, 172-173..... 2

Codes, Statutes, etc.

Page

California Bank and Corporation Franchise Tax Act, Stats. 1929, p. 19, 3 Deering's General Laws, Act 8488:
- Section 4a 8
- Section 27 ..... 8, 18
- Section 30 ..... 8, 18

California Political Code, Section 3617 ..... 3, 12

California Revenue and Taxation Code:
- Section 104 ..... 3, 8, 12
- Section 105 ..... 3, 8, 12
- Section 2188 ..... 8, 21
- Section 2188.2 ..... 8, 20
- Sections 4946-4948 22
- Section 5141 24

Revised Statutes, Section 5219 (12 U. S. C. 548) 7, 8, 9, 11, 12, 13, 14, 17

United States Code, Title 28, Sections 1257(3) and 2101(c) 1

United States Constitution:
- Due Process Clause 22, 25
- Equal Protection Clause 7, 8, 9, 11, 13, 14, 17

In the
Supreme Court of the United States
October Term, 1950

W. J. SIMMS, WILLIAM S. ROSECRANS, Edward W. COST, CARRIE D. GRIBBLE, ZELLA Z. McCOMB, MERCHANTS NATIONAL REALTY CORP., a corporation, and SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association,

Petitioners,

vs.

COUNTY OF LOS ANGELES, a body corporate and politic, and CITIES OF GARDENA, VERNON, MONTEREY PARK, and CLAREMONT, municipal corporations,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of California.

OPINION BELOW

The opinion of the Supreme Court of California herein (R. 317) is reported in 35 Advance California Reports 332, 217 Pac. 2d 936. No opinion was rendered on denial of rehearing. (R. 439).

JURISDICTION

The petition herein seeks to invoke the jurisdiction of this Court under 28 U. S. C. 1257 (3) and 2101 (c). Those provisions do not afford jurisdiction however, since there is not raised herein any substantial or important Federal question. In addition, with respect to the fifth question asserted (Pet., p. 4, claimed denial of Due Process of Law), jurisdiction is also wanting for failure of petitioners to seasonably raise the ques-